

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 10-PM-03200-PEM
)	
MARSHA NOREEN HONDA,)	
)	ORDER GRANTING MOTION
Member No. 100894,)	TO REVOKE PROBATION &
)	ORDER OF INACTIVE ENROLLMENT
A Member of the State Bar.)	
_____)	

1. Introduction

In this probation revocation proceeding (Rules Proc. of State Bar, rule 560 et seq.), the State Bar's Office of Probation charges respondent **MARSHA NOREEN HONDA**¹ with three violations of the conditions of probation that were imposed on her under the Supreme Court's December 15, 2009 order in *In re Marsha Noreen Honda on Discipline*, case number S177201 (State Bar Court case number 08-C-10541) (hereafter *Honda I*). In that December 15, 2009 order, the Supreme Court placed respondent on two years' stayed suspension and three years' probation with conditions, but no (actual) suspension.

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¹ Respondent was admitted to the practice of law in this state on December 1, 1981, and has been a member of the State Bar of California since that time. She has one prior record of discipline.

As set forth *post*, the court finds that respondent is culpable of the three charged probation violations and concludes that the appropriate level of discipline for those violations is revocation of respondent's probation in *Honda I* and the imposition of a new two-year stayed suspension and a new three-year probation with conditions, including a one-year suspension that will continue until respondent fully complies with the probation conditions she violated.

II. Pertinent Procedural History

On March 29, 2010, the Probation Office filed the motion to revoke probation in this proceeding. Three days earlier, on March 26, 2010, the Probation Office, in accordance with Business and Professions Code section 6002.1, subdivision (c) and Rules of Procedure of the State Bar, rule 563(a), properly served a copy of its motion to revoke on respondent by certified mail, return receipt requested, at her latest address shown on the official membership records of the State Bar. That service was deemed complete when mailed even if respondent never received it. (§ 6002.1, subd. (c); *Bowles v. State Bar* (1989) 48 Cal.3d 100, 107-108; but see also *Jones v. Flowers* (2006) 547 U.S. 220, 224-227, 234.)

Respondent never filed a response to the motion to revoke probation, and the time for respondent to do so under Rules of Procedure of the State Bar, rule 563(a) has long expired.

Thereafter, on May 10, 2010, the court took the matter under submission for decision without a hearing.²

III. Findings of Fact and Conclusions of Law

Exhibits 1, 2, and 3 attached to the motion to revoke probation are received into evidence. (Rules Proc. of State Bar, rule 563(e).) Moreover, respondent's failure to file a response to the motion to revoke probation constitutes an admission of the *factual* allegations (not the legal

² The Probation Office did not request a hearing. (Rules Proc. of State Bar, rule 563(a).)

conclusions or charges) contained in that motion and its supporting documents. (Rules Proc. of State Bar, rule 563(b)(3).) The court adopts those factual allegations, which establish the following findings of facts and conclusions of law.

A. Probation-Deputy-Meeting Condition

Respondent's probation-deputy-meeting condition required respondent, no later than February 13, 2010, to contact the Probation Office *and to schedule a meeting* to discuss the terms and conditions of her probation with her assigned probation deputy. The record establishes, by a preponderance of the evidence (Rules Proc. of State Bar, rule 561), that respondent willfully violated her probation-deputy-meeting condition because she failed to schedule a meeting with her probation deputy no later than February 13, 2010. Moreover, the record establishes that respondent had still not scheduled her probation deputy meeting as of March 29, 2010, the date on which the Probation Office filed the present motion.

B. Mental-Health-Issue Condition

Respondent's mental-health-issue condition of probation required respondent to obtain, no later than February 13, 2010, an examination of her mental and physical condition with respect to her mental health issues from a qualified practitioner approved by the Probation Office. (Rules Proc. of State Bar, rule 184.) In addition, that condition requires respondent, no later than 30 days *after that examination*, to begin complying with any treatment/monitoring plan recommended by the practitioner after his or her examination of respondent. That condition also requires respondent, at the request of the Probation Office, to provide the Probation Office with medical and confidentiality waivers and access to all of respondent's medical records necessary to monitor her compliance with her mental-health-issue condition of probation.

The record establishes, by a preponderance of the evidence (Rules Proc. of State Bar, rule 561), that respondent willfully violated her mental-health-issue condition of probation (1)

because she failed to obtain an examination of her mental and physical condition with respect to her mental health issues from an approved, qualified practitioner no later than February 13, 2010, and (2) because she failed to provide the Probation Office with the medical and confidentiality waivers and access to her medical records in accordance with the Probation Office's repeated requests for such waivers (including, but not limited to, the Probation Office's letter requests to respondent dated January 27, 2010, and February 23, 2010).

IV. Aggravation and Mitigation

A. Aggravation

1. Prior Record of Discipline

Respondent has one prior record of discipline, which is an aggravating circumstance. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(i).)³ Respondent's prior record of discipline is the California Supreme Court's December 15, 2009, order in *Honda I*. As noted *ante*, in that order, the Supreme Court placed respondent on two years' stayed suspension and three years' probation on conditions, but no (actual) suspension.

In *Honda I*, respondent stipulated that, on May 18, 2007, she arrested by the Oakland Police Department; that on May 22, 2007, she was charged with violating Penal Code section 246, a felony for discharging a firearm at an inhabited dwelling; that on June 28, 2007, she entered a nolo contendere plea to violating Penal Code section 12025(a)(2), a felony for carrying a concealed firearm; and that she was thereafter sentenced to 62 days in jail with credit given for 42 days served and placed on 5 years formal probation. In *Honda I*, respondent also stipulated that the facts and circumstances surrounding her commission of the felony crime of carrying a concealed firearm (§ 12025(a)(2)) involved other misconduct warranting discipline.

³ All further references to standards are to this source.

In *Honda I*, the parties stipulated that respondent was entitled to mitigation because (1) she did not have a prior record of discipline (Std. 1.2(e)(i)) and (2) was very candid and cooperative with the State Bar during disciplinary proceedings (Std. 1.2(e)(v)). Moreover, the parties stipulated that there was no aggravating circumstance surrounding respondent's misconduct in *Honda I*.

2. Multiple Acts

Respondent's misconduct involved multiple probation violations.

3. Indifference

Respondent's failed to rectify her misconduct by scheduling a meeting with her probation deputy; by obtaining an examination of her mental and physical condition from an approved, qualified practitioner; and by signing the medical waiver forms that the Probation Office sent her (or by signing any commonly accepted medical waiver forms) and then promptly giving the signed waiver forms to the Probation Office once respondent learned that the present probation revocation proceeding had been filed against her. Respondent's failure to rectify her misconduct establishes, by clear and convincing evidence, her indifference toward rectification, which is an aggravating circumstance. (Std. 1.2(b)(v); *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697, 702; see also *In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 530.)

B. Mitigation

Because respondent did not appear in this probation revocation proceeding she did not establish any mitigating circumstances by clear and convincing evidence. (Std. 1.2(e).) Nor are any mitigating circumstances otherwise apparent from the record.

IV. Discussion

According to the Probation Office, “Based on the [violations] of probation, the hearing judge should now recommend that Respondent be actually suspended for the full period of [the two years’] stayed suspension” previously imposed on respondent in *Honda I*. In the court’s view, the Probation Office’s recommended level of discipline is punitive for respondent’s three probation violations.

The purposes of disciplinary proceedings are to protect the public, the courts, and the legal profession; to maintain high professional standards by attorneys; and to preserve public confidence in the profession. (Std. 1.3; *Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

In determining the appropriate level of discipline for respondent’s three probation violations, the court first considers standard 1.7(a), which provides that, when an attorney has a prior record of discipline, “the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior discipline imposed was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust.” Of course, standard 1.7(a) is not to be applied in a talismanic fashion when, as here, there is no common thread or course of conduct running through the past and present misconduct. (*In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527, 534.)

In determining the appropriate level of discipline, the court also considers, inter alia, the seriousness of the three probation violations; any efforts of respondent to comply with the probation conditions; respondent’s recognition of wrongdoing; and the total length of stayed suspension that may be imposed as an actual suspension (Rules Proc. of State Bar, rule 562). (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540; see also Rules

Proc. of State Bar, rule 562.) Furthermore, the violation of a probation condition that is significantly related to the misconduct for which the probation was imposed warrants the most discipline. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 540.)

In the present proceeding, respondent's mental-health-issue condition of probation is significantly related to the misconduct for which the probation was imposed on respondent in *Honda I* because the hearing judge in that proceeding found that there was a nexus between respondent's mental health issues and her misconduct in that proceeding (i.e., discharging a firearm at an inhabited dwelling.) Thus, respondent's two violations of that condition alone warrant significant discipline.

The court finds *In the Matter of Howard* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 445 instructive on the issue of discipline. In *Howard*, the attorney committed four probation violations (failed to file two probation reports, failed to return client financial records and to account, and failed to prove compliance with a court order). In aggravation, Howard did not appear in the probation violation proceeding, engaged in multiple acts of misconduct, and had one prior record of discipline. There was no mitigation, and the review department recommend and the Supreme Court imposed a one-year (actual) suspension.

After carefully considering the seriousness of the three probation violations; the total length of stayed suspension that may be imposed as a suspension; respondent's prior record of discipline; the standards; and caselaw, the court concludes that the appropriate level of discipline is not the two-year (actual) suspension urged by the Probation Office, but a new two-year stayed suspension and a new three-year probation on conditions including that respondent be suspended during the first year of her new three-year probation and until she schedules a meeting with her probation deputy; obtains an examination of her mental and physical condition with respect to her mental health issues from an approved and qualified practitioner; and provides the Probation

Office with medical and confidentiality waivers and access to all of respondent's medical records necessary to monitor her compliance with her mental-health-issue condition of probation.⁴

Moreover, respondent's "continuing" violations of her mental-health-issue condition raise public protection concerns. Accordingly, the court will also order respondent's involuntary inactive enrollment under Business and Professions Code section 6007, subdivision (d). (*In the Matter of Tiernan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 523, 531-532.)

The court does not recommend that respondent be required to take and pass the Multistate Professional Responsibility Examination because she remains obligated to pass that examination no later than January 14, 2011, under the Supreme Court's December 15, 2009 order in *Honda I*. Of course, if respondent fails to pass the examination by that January 14, 2011 deadline, respondent will be suspended from practice until she does by the review department. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8; Cal. Rules of Court, rule 9.10(b); see also Rules Proc. of State Bar, rules 320, 321(a)&(c).)

V. Order and Discipline Recommendation

The court orders that the Probation Office's March 29, 2010 motion to revoke the probation of respondent **MARSHA NOREEN HONDA** is GRANTED. Accordingly, the court recommends that the probation imposed on respondent **MARSHA NOREEN HONDA** under the Supreme Court's December 15, 2009 order in *In re Marsha Noreen Honda on Discipline*, case number S177201 (State Bar Court case number 08-C-10541) be revoked; that the stay of execution of the two-year suspension in that proceeding be lifted; that Honda again be suspended

⁴ Even though not raised or addressed by the Probation Office, the court concludes that respondent should be required to demonstrate that she is now willing and capable of fully engaging in the rehabilitative process by *strictly* complying with the probation conditions that were imposed on her and to which she stipulated in *Honda I* by imposing substantially similar conditions on her for three years prospectively. (*In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697, 705.)

from the practice of law in the State of California for two years, that the execution of this new two-year suspension be stayed, and that Honda again be placed on probation for three years on the following conditions:

1. Honda is suspended from the practice of law for a minimum of the first year of her probation, with credit given for the period of her involuntary inactive enrollment (Bus. & Prof. Code, § 6007, subd. (d)(3)), and she will remain suspended until the following requirements are satisfied:
 - i. She schedules a meeting with her probation deputy; obtains an examination of her mental and physical condition with respect to her mental health issues from an approved and qualified practitioner; and provides the State Bar's Office of Probation with appropriate medical and confidentiality waivers and access to all of her medical records necessary to monitor her compliance with her mental-health-issue condition of probation.
 - ii. If she remains suspended for two years or more as a result of not satisfying the preceding condition, she must also provide proof to the State Bar Court of her rehabilitation, fitness to practice and learning and ability in the general law before her suspension will be terminated. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.4(c)(ii).)
2. Honda must comply with the provisions of the State Bar Act, the Rules of Professional Conduct of the State Bar of California, and all the conditions of this probation.
3. Honda must maintain, with the State Bar's Membership Records Office *and* the State Bar's Office of Probation, her current office address and telephone number or, *if no office is maintained*, an address to be used for State Bar purposes. (Bus. & Prof. Code, § 6002.1, subd. (a).) Honda must also maintain, with the State Bar's Office of Probation, her current home address and telephone number. (Bus. & Prof. Code, § 6002.1, subd. (a)(5).) Honda's home address and telephone number are *not* to be made available to the general public. (Bus. & Prof. Code, § 6002.1, subd. (d).) Honda must notify the Membership Records Office and the Office of Probation of any change in this information no later than 10 days after the change.
4. Within 30 days after the effective date of the Supreme Court order in this probation revocation proceeding, Honda must contact the State Bar's Office of Probation and schedule a meeting with Honda's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Honda must meet with the probation deputy either in-person or by telephone. Throughout the period of probation, Honda must promptly meet with the probation deputy as directed and upon request.
5. Honda must report, in writing, to the State Bar's Office of Probation on January 10, April 10, July 10, and October 10 of each year or part thereof in which Honda is on probation

(reporting dates). However, if Honda's probation begins less than 30 days before a reporting date, Honda may submit the first report no later than the second reporting date after the beginning of her probation. In each report, Honda must state that it covers the preceding calendar quarter or applicable portion thereof and certify by affidavit or under penalty of perjury under the laws of the State of California as follows:

- (i) In the first report, whether she has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct of the State Bar of California, and all other conditions of this probation since the beginning of probation; and
 - (ii) In each subsequent report, whether she has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct of the State Bar of California, and all other conditions of this probation during that period. During the last 20 days of her probation, Honda must submit a final report covering any period of probation remaining after and not covered by the last quarterly report required under this probation condition. In this final report, Honda must certify to the matters set forth in this subparagraph (ii) of this probation condition by affidavit or under penalty of perjury under the laws of the State of California.
6. Subject to the proper or good faith assertion of any applicable privilege, Honda must fully, promptly, and truthfully answer any inquiries of the California State Bar's Office of Probation that are directed to Honda, whether orally or in writing, relating to whether she is complying or has complied with the conditions of her probation.
7. Within the first year of her probation, Honda must attend and satisfactorily complete the State Bar's Ethics School and promptly provide satisfactory proof of her successful completion of that school to the State Bar's Office of Probation. The program is offered periodically at 180 Howard Street, San Francisco, California 94105-1639 and at 1149 South Hill Street, Los Angeles, California 90015-2299. Arrangements to attend the program must be made in advance by calling (213) 765-1287 and by paying the required fee. This condition of probation is separate and apart from Honda's Minimum Continuing Legal Education requirements; accordingly, she is ordered not to claim any MCLE credit for attending and completing this program. (Accord, Rules Proc. of State Bar, rule 3201.)
8. Honda must comply with all conditions of probation imposed in the criminal matter underlying the discipline originally imposed in case number S177201 (State Bar Court case number 08-C-10541) and must so declare in under penalty of perjury under the laws of the State of California in conjunction with any quarterly report to be submitted to the Office of Probation.
9. Honda must obtain an examination of her mental and physical condition with respect to her mental health issues pursuant to rule 184 of the Rules of Procedure of the State Bar of California (Rules of Procedure) from a qualified practitioner approved by the Office of Probation and must comply with any treatment/monitoring plan recommended following such examination. The examination and any further help/treatment/monitoring recommended by the examining practitioner will be at Honda's own expense. The

examination must be conducted no later than thirty (30) days after the effective date of the Supreme Court's final disciplinary order in this matter. Help/treatment/monitoring should commence immediately after said examination and, in any event, no later than thirty (30) days after said examination. With each quarterly report, Honda must furnish to the Office of Probation sufficient evidence, as specified by the Office of Probation, that she is so complying with this condition of probation. Treatment/monitoring must continue for the period of probation or until a motion to modify this condition is granted and that ruling becomes final.

If the examining or treating practitioner determines that there has been a substantial change in Honda's condition, Honda or the State Bar's Office of Probation or the Office of the Chief Trial Counsel may file a motion for modification of this condition with the Hearing Department of the State Bar Court, pursuant to rule 550 of the Rules of Procedure. The motion must be supported by a written statement from the examining or treating practitioner, by affidavit or under penalty of perjury, in support of the proposed modification.

Upon the request of the Office of Probation, Honda must provide the Office of Probation with medical and confidentiality waivers and access to all of Honda's medical records necessary for that office monitor Honda's compliance with this probation condition. Revocation of any medical/confidentiality waiver is a violation of this condition. Any medical records obtained by the Office of Probation will be confidential and no information concerning them or their contents will be given to anyone except individuals within the Office of the Chief Trial Counsel, the Office of Probation, and the State Bar Court who are directly involved with maintaining, enforcing, or adjudicating this condition.

10. Honda's new three-year probation, including Honda's suspension during the first year of her probation, will begin on the effective date of the Supreme Court order in this probation revocation proceeding. At the expiration of the period of probation, if Honda has complied with all the conditions of probation, the new two-year period of stayed suspension will be satisfied and that suspension will be terminated.

VI. Rule 9.20 & Costs

The court further recommends that Marsha Noreen Honda be ordered to comply with California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this probation revocation proceeding.⁵

⁵ Honda is required to file a rule 9.20(c) compliance affidavit even if she has no clients to notify *on the date the Supreme Court files its order in this proceeding*. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) At least in the absence of compelling mitigating circumstances, an

Finally, the court recommends that costs be awarded to the State Bar pursuant to Business and Professions Code section 6086.10 and that such costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

VII. Order of Inactive Enrollment

The court orders that **MARSHA NOREEN HONDA** be involuntarily enrolled as an inactive member of the State Bar of California under Business and Professions Code section 6007, subdivision (d)(1), effective three days after service of this order by mail (Rules Proc. of State Bar, rule 564). Unless otherwise ordered by the State Bar Court or the Supreme Court, Honda's involuntary inactive enrollment under this order will, without the necessity of further court order, terminate on the earlier of the effective date of the Supreme Court order in this matter or one year after her involuntary inactive enrollment begins. (Cf. Bus. & Prof. Code, § 6007, subd. (d)(2); Rules Proc. of State Bar, rule 564.)

Dated: June ___, 2010.

PAT E. McELROY
Judge of the State Bar Court

attorney's failure to comply with rule 9.20 almost always results in disbarment. (E.g., *Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131; *In the Matter of Lynch* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 287, 296.)